

46 Am. Jur. 2d Judges § 249

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Judges

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XII. Special, Substitute, or Pro Tem Judges

D. Objection to Authority

§ 249. Objection to authority of substitute judge, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  19

A litigant generally is not precluded, by application of the de facto doctrine,¹ from challenging the authority of a special or substitute judge to try the case on the basis that such judge does not assume to have any title to the office.² The de facto doctrine will not validate the acts of a judge pro tem where the defect in the proceedings is jurisdictional,³ and a motion to vacate a void judgment may be brought at any time.⁴ However, in proceedings before special, substitute, or pro tem judges acting under a color of right, and not directly involving their authority, the de facto doctrine, where applicable, should operate to prevent challenges to their authority.⁵

Where a special judge has been appointed pursuant to an unconstitutional statute, an aggrieved party may bring a proceeding in quo warranto for the judge's removal.⁶ A court may, where public interest demands a speedy determination, determine the authority of a special judge in a prohibition proceeding, even though a writ of prohibition ordinarily is not the proper remedy to test such judge's authority.⁷

Where a party's consent is necessary to the selection of a special judge, and the party's failure to consent is excused because of disability or some other reason, the party may, upon being made a party or coming into the case, challenge the right of such a judge to act.⁸

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Footnotes

¹ [§ 226.](#)

- 2 State ex rel. McGaughey v. Grayston, 349 Mo. 700, 163 S.W.2d 335 (1942); National Bank of Washington,
Coffman-Dobson Branch v. McCrillis, 15 Wash. 2d 345, 130 P.2d 901, 144 A.L.R. 1197 (1942).
- 3 National Bank of Washington, Coffman-Dobson Branch v. McCrillis, 15 Wash. 2d 345, 130 P.2d 901, 144
A.L.R. 1197 (1942).
- 4 Mitchell v. Kitsap County, 59 Wash. App. 177, 797 P.2d 516 (Div. 2 1990).
- 5 Bird v. State, 154 Miss. 493, 122 So. 539 (1929); Garza v. State, 120 Tex. Crim. 147, 48 S.W.2d 625 (1930);
Tart v. State, 642 S.W.2d 244 (Tex. App. Houston 14th Dist. 1982).
- 6 State ex rel. La Jesse v. Meisinger, 258 Minn. 297, 103 N.W.2d 864 (1960).
- 7 State ex rel. McGaughey v. Grayston, 349 Mo. 700, 163 S.W.2d 335 (1942).
- 8 National Bank of Washington, Coffman-Dobson Branch v. McCrillis, 15 Wash. 2d 345, 130 P.2d 901, 144
A.L.R. 1197 (1942).

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